

REMARKS

Reconsideration and withdrawal of the rejections set forth in the Office Action are respectfully requested in view of this amendment and the following reasons. By this amendment, claims 1, 2, 5, 11, 12, 14, and 16 have been amended, claim 15 has been canceled, and new claim 17 has been added. Claims 1-14, 16, and 17 are pending in this application. The cancellation of claim 15 is made without prejudice or disclaimer to the subject matter contained therein.

Claims 1 and 14 have been amended to more specifically recite the claimed subject matter and provide better wording. Support for the amended features may be found at least in page 4, lines 7-22; and in page 10, line 24 through page 11, line 2 of the present application as originally filed.

Claims 2, 5, 11, and 12 have been amended to correct informalities and to be consistent with the language of independent claim 1.

Claim 16 has been amended to be in independent form and to correct informalities.

New claim 17 is dependent from claim 14 and recites similar features as claim 2.

It is respectfully submitted that the above amendments introduce no new matter within the meaning of 35 U.S.C. §132. For at least these reasons, entry of the present Amendment is therefore respectfully requested. Accordingly, Applicant requests reconsideration and timely withdrawal of the pending rejections for the reasons discussed below.

Rejections Under 35 U.S.C. §101

Claims 1-14 and 16 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Specifically, the Examiner alleged that:

- (1) Claim 1 comprises units which are software embodiments; it is a misnomer to label the invention a system when it comprises solely software. Software is none of an apparatus, machine, manufacture and composition of matter. Claim 1 is not statutory.
- (2) A 35 U.S.C. §101 process must be tied to another statutory class (such as a particular apparatus) or transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim the method is not a patent eligible process under 35 U.S.C. §101. Claim 14 does not require a machine manufacture or composition of matter nor does it transform any subject matter. As such it is non-statutory under 35 U.S.C. §101.

As to the first reason for rejection, it is noted that claim 1 has been amended to include a "data storage unit comprising a computer readable medium accessible thereto" and operatively relate this data storage unit to other units recited in the claim. For example, amended claim 1 recites a replacement unit configured to "replace pieces of data from an intended incoming data stream to be received from the remote sender with

substantially identical pieces of data *retrievable from said data storage unit* according to said reference points” (emphasis added). By this amendment, Applicant believes that the subject matter of claim 1 becomes statutory. See MPEP §2106.01. “When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. See *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)(discussing patentable weight of data structure limitations in the context of a statutory claim to a data structure stored on a computer readable medium that increases computer efficiency) and *In re Warmerdam*, 33 F.3d 1354, 1360-61, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994) (claim to computer having a specific data structure stored in memory held statutory product-by-process claim).”

As to the second reason for rejection, it is noted that claim 14 has been amended to include “accessing a *computer readable media containing instructions for controlling a computer system*, the instructions comprising computer readable code for implementation of” (emphasis added). By this amendment, Applicant believes that amended claim 14 becomes tied to another statutory subject matter, i.e., a computer readable medium containing instructions for controlling a computer system, and therefore, becomes statutory.

In view of these amendments and the above reasons, Applicant respectfully requests withdrawal of the 35 U.S.C. §101 rejection of claims 1-14 and 16.

Rejections Under 35 U.S.C. §102

Claims 1, 5, 7-11, and 14-16 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,597,812 issued to Fallon, *et al.* ("Fallon").

Applicant respectfully submits that the rejections of independent claim 1 must be withdrawn because the cited reference does not disclose, teach, or suggest all of the features of the claimed subject matter. "Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W.L. Gore & Assocs. V. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Further, "when evaluating the scope of a claim, every limitation in the claim must be considered. U.S.P.T.O. personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation.

Applicant respectfully submits that Fallon fails to teach every recited feature of claim 1. Specifically, claim 1, as amended, recites, *inter alia*:

... said reference points being computed by said identification unit and being determined *without using metadata and without prior placing of indications within the data stream showing wherein the data begins* ... (emphasis added)

Applicant submits that this claim feature is not taught or suggested in Fallon. In contrast to the presently claimed subject matter, Fallon does not teach using anchors to

synchronize a data stream “without using metadata and without placing indications within the data stream showing wherein the data begins.” Since this distinctive feature is explicitly recited in claim 1, Applicant submits that claim 1 is allowable over Fallon.

Claims 14 and 16 recite similar feature as claim 1, and thus are allowable for at least this reason. Claims 5 and 7-11 depend directly or indirectly from claim 1, and thus are allowable for at least this reason. New claim 17 depends from claim 14, and thus is allowable for at least this reason. Claim 15 has been canceled without prejudice or disclaimer, thereby rendering the rejection thereto moot.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. §102(b) rejection of claims 1, 5, 7-11, 14, and 16. Since none of the other prior art of record discloses or suggests all the features of the claimed subject matter, Applicant respectfully submits that independent claims 1, 14, and 16, and all the claims that depend therefrom, are allowable.

Rejections Under 35 U.S.C. §103

1. Claims 2 and 3 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Fallon in view of U.S. Patent No. 6,076,084 issued to Harlan (“Harlan”).

Applicant respectfully submits that claims 2 and 3 are allowable because they depend directly or indirectly from claim 1 and Harlan fails to cure the deficiencies of Fallon noted above with regard to claim 1. In other words, since neither Fallon nor Harlan teaches that “said reference points [are] computed by said identification unit and [are]

determined without using metadata and without prior placing of indications within the data stream showing wherein the data begins," as recited in claim 1, even if one of ordinary skill in the art happens to combine the teachings of Fallon and Harlan, the combined references still do not teach this feature of claim 1. Hence, claims 2 and 3 are allowable at least because they depend directly or indirectly from allowable claim 1.

2. Claims 6, 12, and 13 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Fallon.

Applicant respectfully submits that claims 6, 12, and 13 are allowable over Fallon because they depend directly or indirectly from claim 1, which is allowable over the same reference.

3. New claim 17 is allowable over Fallon and Harlan, whether taken alone or in combination, because it depends from allowable claim 14, which is not subject to the 35 U.S.C. §§102 and 103 rejections.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. §103(a) rejection of claims 2, 3, 6, 12, and 13. Since none of the other prior art of record, whether taken alone or in any combination, discloses or suggests all the features of the claimed subject matter, Applicant respectfully submits that independent claim 1, and all the claims that depend therefrom, are allowable.

CONCLUSION

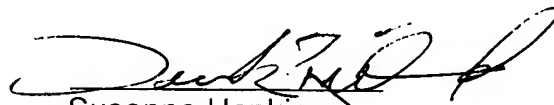
Applicant believes that a full and complete response has been made to the pending Office Action and respectfully submits that all of the stated grounds for rejection have been overcome or rendered moot. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative at the number below to expedite prosecution.

If an extension of time is necessary to prevent abandonment of this application and is not filed herewith, then such extension of time is hereby petitioned for under 37 C.F.R. §1.136(a). Any fees required for further extensions of time and any fees for the net addition of claims are hereby authorized to be charged to our Deposit Account No. 14-0112. Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,
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